HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W.P.No. 2200 OF 2001

Petitioner : Durga Prasad Dhiwar, Son of Shri Lallu Ram Dhiwar, Aged about 41 years, resident of Thanapara, Rajim, Tahsil-Rajim, Distt. Raipur (Chhattisgarh).

Versus

Respondents :1. State of Chhattisgarh, Through the Secretary, Ministry of Higher Education, D.K.S. Bhawan, Raipur (Chhattisgarh).

2. The Arts and Commerce College for Girls, Through the Principle, Devendra Nagar Raipur (C.G.)

Shri Mani Lal Sakat, counsel for the petitioner.
Shri Alok Bakshi, Govt. Advocate for the State/respondent No.1.
None for the respondent No.2.

ORAL ORDER

(3rd February, 2006)

1. According to learned counsel for the petitioner, the petitioner was appointed as Lower Division Clerk in the college of respondent No.2 by order dated 10.2.1992 and the petitioner continued to work till 16.12.1993 when the petitioner was removed from his services with one month's salary paid during the aforesaid period. The petitioner was appointed on adhoc basis at fixed salary. The petitioner absented himself from 17.12.1993, because the petitioner has not been paid salary of 22 months and he was not absorbed in the job. The petitioner

did not join the office, thereafter. The petitioner has filed this petition after a period of 8 years on 12.10.2001 praying that the respondents be directed to take the petitioner back in service with all back wages.

2. This is a case where the petitioner was not removed from services but petitioner on his own left the office and continued to remain absent on the ground that petitioner was not absorbed in the services. The appointment order dated 10.2.1992 (Annexure P-1) clearly indicates that the petitioner was appointed on adhoc basis on a fixed salary as such petitioner did not acquire any right for absorption on the post. Even otherwise, there was no order of removal from service. The petitioner absented himself from 17.12.93 till date. Even otherwise this petition has been filed with inordinate delay of 8 years without explaining reasons for such a long delay. It is established principle of law that the petitioner cannot be entitled for relief when the rights of other parties have settled. The petitioner has failed to make out the case for interference by this Court in exercise of its jurisdiction, under Article 226/227 of the Constitution of India.

3. The Supreme Court in the Case of **P.S. Sadasivaswamy Versus State of Tamil Nadu** [1](A.I.R 1974 Supreme Court 2271) has held as under:

> "It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in matter after the passage of a certain length of time. But it would

be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters".

4. The Supreme Court in **Jagdish Narain Maltiar Versus State of Bihar**[1] (A.I.R. 1973 Supreme Court 1343)held as under:

"Thus it was in August, 1963 that the appellant discovered that his services were really determined for gross misconduct. For nearly 3 years thereafter he kept on submitting one memorandum after another to the Government and it was not until late in 1966 that he filed a Writ Petition in the High Court to challenge the order of removal. The memorials presented by him to the Government were in the nature of mercy petitions and he should have realised that in pursuing a remedy which was not duly appointed under the law he was putting in peril a right of high value and significance. By his conduct he disabled the High Court from exercising its extraordinary powers in his favour. We are therefore of the opinion that the High Court was justified in refusing to entertain the petition".

5. For the reasons stated above and the decision of the Supreme Court (Supra) the petition is dismissed. No order as to cost.

Sd/-
Satish K. Agnihotri
Judge

Gowri